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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,979	08/04/2003	Noah Michael Grayson		2988

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09/08/2004

Noah Michael Grayson
28 Wilton Crest
Wilton, CT 06897

EXAMINER

LEGESSE, NINI F

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,979	Applicant(s) GRAYSON, NOAH MICHAEL	
	Examiner Nini F. Legesse	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 and 2 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objection

Claim 1 is objected because the expression “(see DESCRIPTION OF RELATED ART for explanation of game and relation of invention to game)” in lines 4-5 do not provide clear structure to the claim. Applicant is required to delete this expression. In addition, the term “type” in line 6 and the expression “said holder is unique” in line 13 do not provide clear structure in the claim.

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The expression in brackets that states “with the exception of the rubber or plastic or similar grips as described in claim 1” is improper because it does not further limit dependent claim 1. Please also note that the expression “plastic or similar” in lines 1-2 is not disclosed in the independent claim as Applicant indicates. And the term “maybe” in line 2 and the phrase “similar material” do not clearly define the claim structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US Patent No. 6,131,732) in view of Juergens et al. (US Patent No. 4,074,810).

Schneider discloses a drink tray with spaced holes (item 1 are cup cavities) with the holes being equidistant and they are cut to uniform size (see Fig. 1). The bottom of the holder is a smooth undisturbed surface (see Figs. 3a, 4a, 5a). Schneider discloses the invention as recited above including that the device could be a triangular shape and that it could include any number or arrangements for the cup cavities (see column 2, lines 57-63) but he fails to explicitly indicate the claimed configuration of the cup hole arrangements and he fails to include rubber grips at the bottom of the device. With respect to the claimed arrangements of the cup cavities, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a triangular shaped device as taught by Schneider with the claimed arrangements of the cup cavities in order to optimize the device to hold as many cup cavities as possible. And with respect to the presence of the rubber grips, Juergens is one reference that teaches that the use of rubber grips is not new (item 34, 34'). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide rubber feet to the tray device of Schneider as taught by Juergens for resting the device on a supporting surface as stated in column 2, lines 47-49.

With respect to claim 2, Applicant has eliminated the rubber grips from this claim. Therefore the invention of Schneider meets most of the claim limitations since his

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invention provides a drink tray with spaced holes (item 1 are cup cavities) with the holes being equidistant and they are cut to uniform size (see Fig. 1). The bottom of the holder is a smooth undisturbed surface (see Figs. 3a, 4a, 5a). And since Applicant has indicated in line 3 of this claim that the holder could be made of "similar" material, the foam material of Schneider's meets this limitation. Schneider discloses the invention as recited above including that the device could be any shape including triangular shape and that it could include any number or arrangements for the cup cavities (see column 2, lines 57-63) but he fails to explicitly indicate the claimed configuration of the cup hole arrangements. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a triangular shaped device as taught by Schneider with the claimed arrangements of the cup cavities in order to optimize the device to hold as many cup cavities as possible.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vidovich Greg can be reached on (703) 308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nini F. Legesse

09/03/04